
Barbican Ad-Hoc Scrutiny Committee

28 May 2008

Interim Report

Background

1. In July 2007, Scrutiny Management Committee (SMC) considered a scrutiny topic proposed by Cllr Joe Watt relating to the sale of the Barbican. SMC agreed that the scale of the topic as proposed was too wide ranging for review and requested Cllr Watt's attendance at their next meeting to discuss the possibility of a review tailored to learn key lessons and achieve improvements in handling future developments of a similar scale and nature.
2. Cllr Watt attended the meeting of SMC in September 2007 and agreed to revise his topic submission in order that it did not duplicate the work that was ongoing at the time as part of the review commissioned by the Executive on swimming provision in York.
3. In coming to a decision to review this topic, the Scrutiny Management Team recognised certain key objectives and the following remit was agreed:

'To investigate the arrangements surrounding the sale of the Barbican site, with the purpose of learning some key lessons for the future, in the event of developments of a similar nature or scope being proposed.

- To understand why the contract in relation to the sale of the Barbican site was not signed, sealed and delivered until May 2003.
- To understand the public consultation process which took place and the resulting decisions.
- To assess whether decisions taken in relation to the sale resulted in a loss of capital to the Council.
- To understand the changes in land values with a view to establishing whether best value was actually achieved in this case.

Consultation

4. This review has been carried out in consultation with the Assistant Director of Lifelong Learning & Leisure, the Head of Property Services, Political Group Leaders i.e. those involved in the decision making process relating to the Barbican, and representatives of the Save Our Barbican Group and the Barbican Action Group.

Information Gathered

5. In order to understand the full sequence of events leading to the Barbican sale, The Committee were given copies of all the reports previously presented at formal decision making meetings together with the minutes of those meetings. They then held a number of informal meetings where they met separately with officers, Members and representatives of the local action groups, to discuss their understanding of the events and to ask a number of questions.
6. From this process the Committee were able to clarify the following information:

To understand why the contract in relation to the sale of the Barbican site was not signed, sealed and delivered until May 2003

19. In 2001 sales particulars for the site were issued, and 11 bids were received. Five of these were long listed and invited to make further bids based on a number of objectives. Four schemes were submitted as a result of this process from which two were short listed. In November 2002, Barbican Venture Ltd (BV) was selected as the preferred developer. This was a company formed for this particular project with the intention of building a serviced residential and two hotel site and refurbishing and selling the Kent Street car park. A county standard pool at no cost to the authority was part of the deal (to be operated by Cannon Leisure) and refurbishing the Barbican Centre (to be operated by Absolute Leisure).

Issues Arising

20. While the council was trying to assemble a workable scheme only a limited amount of consultation was done with a small number of representatives. As there was opposition within the Council to the BV scheme and bid, and the council's plans for the other two pools in the city, a decision was taken in February 2003 to launch a city-wide public consultation prior to the signing of the contracts, to ensure the proposals were broadly publicly acceptable.
21. A consultation leaflet was issued in March 2003 and although the results came in during the pre-election period. It appears that a decision was taken not to make them available publicly until after the election, which, in turn, delayed the signing of the contract.

To understand the public consultation process which took place and the resulting decisions

22. There was a mixed response to the consultation leaflet issued in March 2003. Although the results broadly supported the refurbishment and renewal of the Barbican, there was some criticism of the lack of community and play facilities and the level of fitness equipment. At that time, two issues came to light:
 - The inclusion of a county standard pool, with spectator facilities, made it difficult to provide the requested fitness facilities

- The capital receipt would most likely be insufficient to refurbish the other pools in the City
15. The incoming administration in 2003 decided to run the pool as a Council service and renegotiate with BV on a different package which would address the capital receipt issue.

Issues Arising

16. During the period of renegotiation, the Council received external legal advice that it would be illegal to allow BV to build the pool as part of the development bid. It was advised that even though BV's intention was to gift the pool to the City, the contract to construct the pool would have to be let by the Council having been tendered in accordance with European procurement rules.
17. A further public consultation was carried out in July 2003 on a revised package which asked whether residents preferred a community pool with considerable investment in other city pools, or a county standard pool with fewer resources available for the other pools. The result was marginally in favour of the community pool, and this was selected by the Executive in September 2003.
18. BV responded to the results of the consultation by submitting a revised application and a decision was taken not to consult on that revised submission as it would be subject to the planning process.

To assess whether decisions taken in relation to the sale resulted in a loss of capital to the Council & To understand the changes in land values with a view to establishing whether best value was actually achieved in this case

19. In October 2003 an archaeological survey showed that parking for the apartments and hotel could be put in an undercroft under the buildings. BV became Barbican Venture (York) Ltd and submitted a new scheme and offer.
20. As part of their new scheme, they increased the number of apartments and included a new 4 star hotel. They also moved the council's community pool on to the Kent Street coach park site, requiring a third of the car park to be demolished. The revised scheme was accepted by the Council's Executive in December 2003.
21. In February 2004 the executive agreed to split the sale of the site into two contracts. The residential and hotel sites and the Kent Street car park to be sold to Barbican Venture and a lease of the auditorium to Absolute Leisure Ltd.

Issues Arising

22. The Save our Barbican Group (SOB) started in spring 2003 when the consultation document was issued, and things intensified following the enlargement of the residential development. SOB's aim was to stop the development, to enable a rethink and consideration of other alternatives, with

proper consultation. This aim was not achieved and ceased to be possible at the granting of planning permission.

23. In 2004, SOB took legal action due to the Council not having carried out an Environmental Impact Assessment (EIA) as part of the planning process. This eventually led to judicial review by which time, it was too late for the Council to get an EIA as this was needed prior to planning approval. The advice given to the Council at the time, was that the judicial review would only take six months. But, when SOB lost the judicial review, they chose to appeal as they felt it would be of national importance to other environmental groups. They then had to fight a decision not to grant them legal aid which they won. Having got financial aid, their original appeal was heard but it was unsuccessful. This series of events could not have been predicted in advance.
24. It is recognised that the original scheme could have been built had the delays not occurred, as it was a good time to sell property and the best possible offer had been made. But, by the time the judicial review was rejected in 2005, the property market had begun to dip. As a result, BV submitted a revised lower offer which the Council refused.
25. Subsequently, there was a thorough review as to whether CYC should have gone out again to tender (audit report). It found that as the market was dropping and not many companies were interested in this mix of development, the council would have been worse off.

Options

26. Having regard to the remit for this review and the information contained within this report, Members may
 - Request additional information to support the review
 - Agree that they now have all of the necessary information in order to make some final recommendations

Corporate Direction & Priorities

27. It is recognised that this review supports the following direction statements as set out in the Council's Corporate Strategy:
 - We will listen to communities and ensure that people have a greater say in deciding local priorities
 - Our ambition is to be clear about what we will do to meet the needs of our communities, and then deliver the best quality services that we can afford
28. The review also provides an opportunity for the Council to consider the procedures followed and the decisions taken at the time of the sale of the Barbican, in order to identify ways of improving what we do, in line with our Corporate Values.

Implications

29. There are no Financial, HR, Equalities, Legal, Crime and Disorder, ITT or other implications associated with the recommendation within this report.

Risk Management

30. There are no risks associated with the recommendations within this report.

Recommendations

31. In light of the above options, Members are asked to:
- i. Note the contents of the report and agree any amendments
 - ii. Agree what if any, additional information is required to progress this review
 - iii. Consider whether there was a loss in capital for the council as a result of the decisions taken
 - iv. Consider whether best value was achieved

Reason: To ensure full consideration of all the objectives, and the completion of the review within the agreed timeframe

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Interim Report Approved



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Wards Affected:

All



For further information please contact the author of the report